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718-131—64——1

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 630

ALLEN M. WILLIAMS AND RICHARD CHARLES MEIER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 323 F. 2d 90.

JURISDICTION

The judgment of the court of appeals was entered on September 30, 1963. A petition for rehearing was denied on October 18, 1963. The petition for a writ of certiorari was filed on November 18, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether probable cause existed for petitioners' arrests and the search and seizure of the automobile in which they had come to town.

2. Whether various trial rulings were correct.

STATUTE INVOLVED

18 U.S.C. 2312 provides:

> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Section 31–322, Wyoming Statutes Annotated (1959) provides in pertinent part:

> All officers are hereby empowered, authorized and directed to take and hold possession of any automobile * * * which such officer may have good and sufficient reason to believe is not in the rightful possession of the driver or person in charge thereof for such reasonable time as may be necessary; * * *

STATEMENT

After jury trial in the United States District Court for the District of Wyoming, petitioners were convicted on a one-count information charging the interstate transportation of a stolen vehicle, knowing the same to have been stolen (18 U.S.C. 2312). Petitioner Williams was sentenced to imprisonment for four years, and petitioner Meier was sentenced to imprisonment for three years. The court of appeals affirmed.

The pertinent facts may be summarized as follows:

1. At approximately 12:05 p.m. on Friday, May 11, 1962, petitioner Williams came to the office of an assistant county clerk in Laramie, Wyoming, in order to obtain a Wyoming title on a 1962 Cadillac. He presented to the clerk a bill of sale and a Georgia certificate of title purportedly covering the Cadillac, both made out to "Clyde W. Huntsworth". Petitioner assured the clerk that he was Huntsworth (Tr. 4–6, 13; see Exs. 1 and 2 at R. 59).[1] Because of prior experience with Georgia certificates and stolen vehicles, the clerk would not issue title without a physical examination of the car. On ascertaining that the vehicle was not available for inspection and that petitioner would not leave the Georgia papers with her, the clerk communicated with undersheriff Lankford (Tr. 7, 15–16, 21). With the Georgia papers in her hand, the clerk then led petitioner to Lankford's office (Tr. 7).

Lankford told petitioner that because of prior experience with Georgia registrations, a personal inspection of the vehicle would be required. Petitioner replied that he did not have the vehicle and that it was in New York (Tr. 21). He stated that his name was Huntsworth, but that he did not have any personal identification papers with him because his wallet was in the car in which he was traveling. He then told Lankford that he was traveling with a man

[1] "Tr." refers to the transcript of the trial, a copy of which we are lodging with the Clerk of this Court. "R." refers to the 61-page Transcript of Record used in the court of appeals, a copy of which is on file with the Clerk of this Court.

named Anderson in a blue-green 1961 Oldsmobile bearing Washington license plates, and that the car was parked in front of the court house (Tr. 22). At approximately 12:45 p.m. Lankford called the National Auto Theft Bureau in Denver and requested a "routine check" on the 1962 Cadillac which petitioner had been trying to register. At approximately 2:30 p.m., Lankford received information that the 1962 Cadillac belonged to one Dixon in Chicago (Tr. 27, 105) and that it had not been reported stolen (Tr. 105; see Tr. 98–99).

Lankford informed petitioner of what he had learned from the Auto Theft Bureau, and petitioner replied that he "just didn't understand this kind of business" and that he had paid $6,200 in cash for the Cadillac (Tr. 106). Lankford then arrested petitioner without a warrant and charged him with "investigation of auto theft" (Tr. 28, 29, 106).

In the meantime, Lankford had assigned a highway patrolman to find the blue-green Oldsmobile with Washington license plates to which petitioner had referred (Tr. 24). The patrolman discovered such an automobile parked near the court house, and Lank-

[2] In a hearing out of the presence of the jury, petitioner testified that his liberty was restrained following his first conversation with Lankford. He said that Lankford asked him to wait while information was checked with the Theft Bureau, and that he would have to be locked up in order to eat lunch (Tr. 50–52). Lankford said that petitioner was not under arrest until after receipt of information from the Bureau; that he could have left any time he established his identity; and that had petitioner left "I don't know what I could have done about it" (Tr. 36).

ford talked to its occupants. He was satisfied that they had come to the building to pay their taxes and that they had nothing to do with petitioner Williams (Tr. 24–25).

Early in the afternoon—some time after petitioner Williams was arrested—Lankford was told by the assistant county clerk that she had observed a man walking back and forth in front of the court house, looking up toward the jail (Tr. 10, 41). Lankford, who was then "looking for Mr. Anderson" (*i.e.*, petitioner Williams' alleged companion) (Tr. 31), went into the street where he observed petitioner Meier walk down several streets and then return to a white 1961 Cadillac parked near the court house (Tr. 31). He approached petitioner Meier and asked him if he owned the 1961 Cadillac. Petitioner responded that he did not, but that it was owned by one Hamilton, with whom petitioner had come to Larganie (*ibid.*). When asked if he had keys to the car, petitioner gave Lankford four unmarked keys[1] which opened the Cadillac "perfectly" (Tr. 32). Lankford then arrested Meier for "investigation of the Cadillac" (Tr. 32).[2] Meier identified himself as "George E. Richmond" (Tr. 72).

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[1] Lankford defined "unmarked keys" as follows: "An unmarked key is a key blank with no numbers on them. As they come from the factory they are numbered. These keys had no numbers on them" (Tr. 32).

[2] During a hearing out of the presence of the jury, Meier testified that after he gave Lankford his wallet, Lankford searched him and found the keys. Lankford then told him he thought the Cadillac was stolen, took the numbers from the door post and the certificate of title from the glove compartment, and brought Meier to the station (Tr. 65).

2. On arresting Meier, Lankford took the 1961 Cadillac into custody and searched it. On the seats, in the trunk and in the glove compartment, he found the following objects which were ultimately introduced into evidence over petitioners' objections: a newspaper on which the name "Clyde W. Huntsworth" had been handwritten five times (Tr. 79); a used car guide (Tr. 80); a book of automobile titles and transfers, not further described (Tr. 81); a screwdriver (Tr. 81); a carton of food coloring (Tr. 82); a pair of pliers (Tr. 82); a claw hammer (Tr. 82); a Georgia license plate (Tr. 83); a box containing several items, only four of which were described for the record—a jar of alum, a pair of shoes, a can of black pepper and a bottle of glycerine (Tr. 85, 88); a box of road maps (Tr. 89); a hair piece (Tr. 91); a Nebraska automobile registration slip (Tr. 92–93); and a Nebraska certificate of title made out to Curtis G. Hamilton, Jr. (Tr. 93–94).

3. On Monday, May 14, 1962, petitioners, who were still being held on the charge of "investigation of auto theft" (Tr. 43–44), were arraigned in "Justice Court." Williams was charged with forgery (Tr. 43), apparently because he had signed the name "Huntsworth" to the application for registration. Meier, who was carrying a tear gas pencil in his shirt pocket when he was first arrested—and who may have reached for it when he was approached by Lankford (Tr. 42)—was charged with carrying a concealed weapon with intent to assault (Tr. 42). These local charges were subsequently dismissed when petitioners

were transferred to federal custody on May 17 (Tr. 123).

On the same day, an F.B.I. agent named Gustafson arrived at the sheriff's office in Laramie, having been informed on May 11 of the arrest of petitioners (Tr. 145–146). Gustafson spoke with petitioner Williams, advised him that he did not have to make any statement, and permitted him to call an attorney (Tr. 147).[5] During the interview, Williams admitted that Huntsworth was not his real name. He told Gustafson that he and George Richmond (the name Meier had given) were driving the 1961 Cadillac from Seattle to Nebraska on behalf of Curtis Hamilton, whom they were to meet in Nebraska (Tr. 147–148). Gustafson also spoke with petitioner Meier, who gave substantially the same story regarding petitioners' possession of the 1961 Cadillac (Tr. 207).

Some time on May 14, after he had spoken to Williams (Tr. 149), Gustafson searched the 1961 Cadillac. He discovered that the serial numbers on the left front frame and on the motor of the automobile did not match the serial number on the bell housing of the engine (Tr. 150–153).[6] A further search of the automobile uncovered a "well" near the left rear fender, in which there were stored a leather bag and

[5] In the course of his own testimony, Williams stated that he was permitted to call counsel within four hours of his arrest on May 11 (Tr. 266).

[6] The bell housing number is apparently a concealed serial number placed on the engine "so that automobiles can be traced" (Tr. 151) even if the more obvious serial numbers are altered.

two paper bags (Tr. 165). In these bags Gustafson found the following objects, which were introduced into evidence at the trial over petitioners' objections:[7] 63 keys for General Motors cars; a device which could be used to cover a flashlight; a flashlight; a device used to open automobile windows; ten metal cutting dies used for stamping numbers; a bill of sale for a 1961 Cadillac with serial number 61K077327; a Georgia certificate of title registration bearing the same number; a serial number identification plate bearing the same number (which had been missing from a Cadillac owned in Detroit); a Georgia license plate; two Oregon license plates; a bill of sale covering a Ford Thunderbird automobile; an Oregon registration card for the same automobile issued to Fred Anderson; a serial number identification plate bearing the number of the Thunderbird (which had been missing from a Thunderbird owned in Cleveland); and two applications for West Virginia motor vehicle titles (Tr. 164–200).

5. In addition to the call which had been placed to the Auto Theft Bureau regarding the 1962 Cadillac which petitioner Williams had attempted to register (p. 4, *supra*), Lankford had placed a similar call for a check on the 1961 Cadillac which had been taken into custody (Tr. 98). The automobile was traced by the number on its vehicle identification plate, and

[7] None of the specific objections made to the admission of this evidence questioned the validity of the search. However, we accept the earlier objections made to the admission of items taken from the car by Lankford (Tr. 69) as applicable to all subsequent searches as well.

the Auto Theft Bureau learned that the automobile with that serial number was still in the possession of its original owner, although the identification plate had been reported missing from the car approximately six months before (Tr. 223). After Gustafson discovered the bell housing serial number the automobile was traced, on May 15, 1962, to its owner in Portland, Oregon, who reported it as having been stolen from his garage on April 27, 1962 (Tr. 133–138).

6. Petitioners were thereupon charged with interstate transportation of a stolen vehicle, knowing the same to have been stolen. Both testified at their trial and said that they were driving the car from Seattle to Nebraska at the request of and for the benefit of Hamilton. Williams testified that he believed Hamilton to be an automobile dealer who would introduce him and Meier to further automobile transactions (Tr. 251–252). As to the items found in the fender well, Williams said that when he and Meier picked up the car from Hamilton there was a brief period of time during which he and Meier left the car with Hamilton, and that at that time Hamilton must have hidden the items in question (Tr. 254). The F.B.I. was unable to locate the alleged Curtis Hamilton (Tr. 215).

ARGUMENT

This case is a classic illustration of the validity of this Court's observation in *Brinegar* v. *United States*, 338 U.S. 160, 174, that if rigid standards were to be applied "in determining probable cause for an arrest or for search and seizure, more especially in cases

such as this involving moving vehicles used in the commission of crime, few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end." The circumstances surrounding the arrest of petitioner Meier and the searches of the 1961 Cadillac might, in the abstract, appear to raise serious questions. However, we submit that when considered in light of the type of offiense of which petitioners were suspected and "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act" (338 U.S. at 175), the arrest and subsequent searches were permissible under federal and state law. Since this case involves a unique set of facts and since, in our view, the decision of the court of appeals was correct, we submit that there is no occasion for further review by this Court.

1. The *modus operandi* used in car thefts of the sort involved in this case is important to an understanding of the action taken here by law enforcement officials. As spelled out in the government's summation to the jury (Tr. 359–360) and supported by the testimony of an official of the National Automobile Theft Bureau regarding the facts of this case (Tr. 218–232), the scheme is as follows: First, the identification plate is removed from an automobile parked on a city street or in a parking lot. The thief, knowing the color, design and make of the automobile, then registers that automobile in some other State and obtains the usual title papers. (This can be done readily in Georgia, which does not require proof of

title, or may be accomplished in many other States if an appropriate bill of sale is forged.) Thereafter, being in possession of title papers for an automobile of a certain color, design and make, the thief steals a similar automobile and affixes the stolen identification plate to the door post in place of the one attached by the manufacturer. Consequently, he holds title papers and apparently rightful possession of an automobile *which has never been reported stolen* and does not assume the risk of being caught driving an automobile without registration appropriate for that particular vehicle.

2. In the present case, undersheriff Lankford clearly had probable cause to arrest petitioner Williams when he did. Petitioner had (1) used suspicious Georgia papers (2) under an assumed name for which he could supply no supporting identification (3) to register an automobile allegedly garaged at an unknown address in New York (4) which was actually reported in the possession of a Chicago resident (5) and which Williams claimed to have purchased in Georgia and not in Chicago. Under these circumstances the officer had probable cause to suspect Williams of participation in a felony involving a stolen vehicle. Under Wyoming law, automobile theft is a felony (Wyoming Statutes Annotated (1959) Section 31-317), and an officer may arrest without a warrant one whom he has probable cause to suspect of having committed a felony. See *State* v. *George*, 32 Wyo. 223; *State* v. *Rotolo*, 39 Wyo. 181. Indeed, it is difficult to imagine a state of facts consistent with innocence which could have explained why petitioner was seeking to

register in Wyoming an automobile which was then in the possession of a Chicago resident. Moreover, since no statement or other evidence that was the "fruit" of Williams' arrest was introduced at the trial, the validity of Williams' arrest is not significant *per se*. It is important only as it bears on the arrest of petitioner Meier and the subsequent searches of the automobile.

3. As to petitioner Meier, the facts also establish probable cause for arrest. After having cleared the occupants of the blue-green Oldsmobile, the officer had sound reason to believe that Williams' associate was waiting near the court house in a different automobile. When he was informed that a man was walking back and forth in front of the court house, "looking up at the jail," there were reasonable grounds to suppose that the individual was Williams' associate. His conduct—*i.e.*, waiting in front of the court house, and looking up toward the jail—was entirely consistent with what might have been expected of Williams' confederate. Although this information alone would obviously have been inadequate for an arrest, it was certainly sufficient to warrant further inquiry.

When the officer followed Meier he observed him walk approximately two blocks and then retrace his steps to the location of the parked 1961 Cadillac. The car had Nebraska license plates (Tr. 92), and since Williams was from out of state, this was consistent with the suspicion that it was the automobile in which he had come to town. When Meier was asked to whom the car belonged, he replied that it was owned by one Hamilton

"with whom I came to Laramie with" (Tr. 31). He produced four unmarked keys to the car—certainly not the usual equipment for a passenger. Considering the totality of the circumstances, the officer could reasonably conclude at this point that in light of (1) Meier's conduct in front of the court house, (2) his circuitous route to the automobile, and (3) the suspicious circumstances surrounding his custody of the Cadillac, he was implicated with Williams in the commission of a felony involving auto theft. Because of the ingenious method used by those engaged in this activity (pp. 10–11, *supra*), there was no quick method available to determine whether the automobile to which Meier had keys was stolen or not.

The fact that the sheriff said he was arresting petitioners for "investigation of auto theft" or "investigation of this Cadillac" did not invalidate the arrest. Plainly, this was a layman's way of saying that he was arresting petitioners for participation in auto theft. In this respect the case should be controlled by the reasoning in *Bell* v. *United States*, 254 F. 2d 82, 86 (C.A.D.C.), certiorari denied, 358 U.S. 885, where an officer testified that he had made an arrest for "[i]nvestigation of housebreaking." The court of appeals there held that the basic question was one of probable cause and "* * * not what name the officer attached to his action * * *." See also *Payne* v. *United States*, 294 F. 2d 723, 725 (C.A.D.C.), certiorari denied, 368 U.S. 883, where it was said that an officer arresting on probable cause need not be thinking in the technical terms of conspiracy.

Nor should the fact that the other charges, which were ultimately dismissed, were filed against petitioners affect the validity of their arrests for auto theft. By Monday, May 14, undersheriff Lankford certainly had sufficient probable cause to arrest Meier for theft of the 1961 Cadillac since Hamilton, the purported owner of the automobile "with whom [Meier] came to Laramie" (Tr. 31), had not appeared at police headquarters to claim his automobile or to report his traveling companion as missing. Hence the additional charges are attributable to the officer's mistaken notion that it would be easier to keep petitioners in custody while ownership of the automobiles was being traced if they were charged with other local offenses (Tr. 100). This error should not affect the admissibility of evidence against petitioners which was otherwise obtained by a lawful arrest and search.

4. The search of the 1961 Cadillac by Lankford was incident to Meier's lawful arrest. It could be searched because, by the very nature of the offense with which Meier was charged, it was necessary to discover who the rightful owner of the automobile actually was. In addition, the automobile was actually "fruit of [the] crime" within the meaning of *Harris* v. *United States*, 331 U.S. 145, 154, so that it could be searched and seized incident to a lawful arrest for auto theft. Finally, the seizure was justified apart from any supporting arrest under Section 31-322 of Wyoming Statutes Annotated (1959), which provides:

> All officers are hereby empowered, authorized and directed to take and hold possession of any automobile * * * which such officer may have

good and sufficient reason to believe is not in the rightful possession of the driver or person in charge thereof for such reasonable time as may be necessary; * * *

5. The search by Gustafson on May 14, 1962, was made after it had been established by petitioner Williams' own admission that he had come to Laramie with Meier (then still known as Richmond) in the 1961 Cadillac. Knowing, as he did, that Williams had first been apprehended after attempting to obtain a Wyoming registration for an automobile which was still in the possession of a Chicago resident, Gustafson had substantial reason to believe that the scheme described at pp. 10–11, *supra*, was being attempted by Williams and anyone involved with him. This information, together with Hamilton's failure to appear and reclaim his automobile, justified the State authorities in retaining custody of the 1961 Cadillac under the above Wyoming statute until its ownership had been established. And having discovered the discrepancy between the concealed and open serial numbers, the law-enforcement officials were also justified in retaining custody of the automobile and searching it further. Hence both the search made by undersheriff Lankford on May 11 and that made by F.B.I. agent Gustafson on May 14 were valid, and the evidence produced by those searches was properly admitted against petitioners.

6. If the entire course of conduct is viewed in light of the types of crime involved and the alternatives available to law-enforcement officials, the fair conclusion is that the officers' conduct here was that "of

reasonable men, acting on facts leading sensibly to their conclusions of probability." *Brinegar* v. *United States*, 338 U.S. 160, 176. Having substantial grounds to believe that petitioners were engaged together in an ingenious scheme to steal automobiles with minimal risk, they had no alternative other than to keep them in custody until the true ownership of the 1961 Cadillac was established.

7. Petitioners' complaints as to various trial rulings all relate to isolated incidents of no real significance. As this Court has said: "We must guard against the magnification on appeal of instances which were of little importance in their setting." *Glasser* v. *United States*, 315 U.S. 60, 83.

a. At four points during the testimony of agent Gustafson, defense counsel objected on the ground that the witness was not qualified, and on each occasion that court told counsel that, if he desired, he might inquire further as to the witness' qualifications (Tr. 162, 166, 180, 185). Read in context the court's remarks were in no way intended to shift the responsibility of qualification from the government to the defense. Rather the court was ruling that, as a preliminary matter, the witness was qualified, and that any attempt to impeach his qualifications would have to come from the defense.

b. The attack on the testimony of Rickards with respect to the records of the Auto Theft Bureau is fully discussed in the opinion of the court of appeals (Pet. App. A9). As the court pointed out, if there was any hearsay, it went only to matters which were either not disputed or were established by other com-

petent evidence. The crucial fact as to ownership of the car driven by petitioners was established by the testimony of the owner.

c. There was no error in the cross-examination of petitioner Meier. The trial judge exercised his discretion by allowing a preliminary question as to whether Meier had lived with a certain woman (Tr. 341). At this stage it appeared that some relevant form of impeachment might be developed as to the relationship between Meier, the woman, and this case. When the government sought to show only that she was a narcotics addict, the court terminated the questioning before any answer was given.

Further in the cross-examination, Meier admitted that he had handled some of the road maps found in the car (Tr. 345)—maps which had been tested for fingerprints (Tr. 202). When he could not remember handling a particular map, the prosecutor asked whether he would remember handling it if told that his thumbprint was on it (Tr. 346). There is no basis for any inference that the government was trying to hint at nonexistent evidence, or otherwise asked the question in bad faith. At most, the prosecutor was seeking to expand upon and clarify Meier's admission as to having handled some of the maps.

d. Petitioners' attack on the prosecutor's summation, on two grounds not raised at the trial, is without merit. The statements complained of were well within the range of permissible comment. In any event the judge instructed the jury that the argument of counsel was not evidence and should not be so considered (Tr. 376–377).

c. At trial, petitioners objected to the court's instructions on "intent" as "not being the law applicable" (Tr. 383–384), a contention which is renewed here. The court instructed that intent might be inferred from (Tr. 381)

> * * * the character of the act, the circumstances surrounding it and from the conduct of a like character which may appear as tending to aid you in finding and discovering it, but in connection with all this, unless the evidence satisfies you of something different, you are instructed that a person is responsible for the natural probable legitimate consequences of his own acts."

While questions have been raised as to the propriety of the "natural and probable" instruction in cases involving specific intent (see *e.g., Sherwin* v. *United States*, No. 519, this Term, certiorari denied, January 6, 1964) such an issue has nothing to do with this case, where the offense turns not upon "intent" but upon knowledge. The crucial question is whether petitioners knew that the car which they admitted driving from Seattle to Wyoming was stolen. The court twice instructed correctly on the matter of knowledge (Tr. 378–379, 382–383), and no question has been raised as to those instructions.

Petitioners' remaining arguments regarding the instructions were never raised at the trial level and should not now be heard. See Rule 30, Federal Rules of Criminal Procedure.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for a writ of certiorari should be denied.

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